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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MOHAMMAD PEYRAVIAN, ALLEN ROGINSKY,
NEVENKO ZUNIC, and STEPHEN M. MATYAS JR.

Appeal 2008-1042
Application 09/458,410
Technology Center 2100

Decided: September 24, 2008

Before LANCE LEONARD BARRY, JAY P. LUCAS, and
ST. JOHN COURTENAY III, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of claims 1-19. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

THE INVENTION

The disclosed invention relates generally to cryptographic protocols. More particularly, the present invention relates to time-stamping digital documents. (Spec. 1).

Independent claim 1 is illustrative:

1. A method for time-stamping a digital document comprising:

receiving identifying data derived from a document at an outside agency;

creating at said outside agency a first receipt based on said identifying data;

creating at said outside agency a second receipt, different from said first receipt, based on a time indication that indicates when the document was received at the outside agency;

inserting a linking value into said first and second receipts that links the identifying data in the first receipt with the time indication in the second receipt;

certifying said first and second receipts at said outside agency using a cryptographic signature scheme.

THE REFERENCE

The Examiner relies upon the following reference as evidence in support of the rejection:

Haber

WO 92/03000

Feb. 20, 1992

THE REJECTION

1. Claims 1-19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Haber.¹

PRINCIPLES OF LAW

Anticipation

In rejecting claims under 35 U.S.C. § 102, “[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation.” *Perricone v. Medicis Pharm Corp.*, 432 F.3d 1368, 1375-76 (Fed. Cir. 2005) (citation omitted). “Anticipation of a patent claim requires a finding that the claim at issue ‘reads on’ a prior art reference.” *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed Cir. 1999) (“In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.”) (internal citations omitted).

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner’s position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006). Therefore, we look to Appellants’ Brief to show error in the proffered prima facie case.

¹ The Final Office Action rejected claims 1-19 under 35 U.S.C. § 112, second paragraph, and claims 1 and 9 under 35 U.S.C. § 101. However, according to the Examiner’s Answer, these rejections have been withdrawn and are therefore not subject to this appeal.

Findings of Fact

The following findings of fact are supported by a preponderance of the evidence.

Specification

1. Appellants define the claimed “linking value” as a nonce that serves as a link between two parts of the time stamp receipt. (Spec. 4).
2. Each of the first and second parts of the receipt contains the linking value. (*Id.*).

Haber

3. Haber is directed to time stamping a digital document. (Abst. II, 1-4).
4. Haber teaches that a document is hashed and then transmitted to the Time Stamping Authority (TSA), which adds time data to create a receipt. (pg. 14, ll. 10-24).
5. Haber teaches that the immediately preceding document D_{K-1} has an associated time-stamp t_{K-1} which is added to the receipt created by the TSA. (pg. 15, l. 28 – pg. 16, l. 10)

Anticipation

Claims 1-19

We consider the Examiner’s rejection of claims 1-19 as being anticipated by Haber.

Appellants contend that Haber fails to teach the limitations of a first and second receipt that includes a linking value that links the two receipts

together, as recited in claim 1. (App. Br. 3). We agree for the reasons discussed *infra*.

Haber's time-stamping method creates a single receipt that is associated with a first document, and the single receipt also contains the time-stamp receipt of another preceding document. (See FF 4-5). The Examiner contends that the time information for the preceding document t_{K-1} is a linking value that links the first and second parts of the receipt. (Ans. 7-8). We disagree.

Claim Construction

At the outset, we conclude that Appellants' disclosed and argued definition of the claim term "linking value" is a nonce that is contained in both the first and second receipts. The linking value links the identifying information of the first receipt to the time indication of the second receipt. (FF 1-2).

We agree with Appellants' contention that Haber fails to teach a linking value that links two parts of the receipt for one document. As noted by Appellants, Haber teaches that the TSA creates a single composite certificate that includes a composite hash of the entire history of the TSA time-stamping operation concatenated with the current transaction. (Br. 6). In particular, we do not agree with the Examiner's determination that the time-stamp for the previous document (disclosed in Haber) is a linking value between two different receipts as claimed. The time-stamp for the previous document merely gives a point in time that the document in question did not exist. (Haber pg. 16).

Moreover, it is our view that Haber does not teach two receipts, as recited in claim 1. Instead, Haber teaches that a single receipt is created in two parts. According to Haber, the first part of the receipt is hashed document identification information. The second part of the receipt is created when the hashed document identification information is forwarded to the TSA for a time stamp. Thus, the single receipt is created by adding the time stamp information (second part) to the hashed document information (first part). (FF 4). Thus, in Haber there would be no need for a linking value in a single receipt.

Therefore, based on the record before us, we conclude that Appellants have shown error in the Examiner's finding that Haber teaches a linking value that links identifying data in the first receipt with the time indication in the second receipt, as recited in claim 1. We note that "absence from the reference of any claimed element negates anticipation." *Kloster Speedsteel AB v. Crucible, Inc.*, 793 F.2d 1565, 1571 (Fed. Cir. 1986).

Because we conclude that Appellants have met the burden of showing error in the Examiner's prima facie case of anticipation by a preponderance of the evidence, we reverse the Examiner's rejection of independent claim 1 as being anticipated by Haber.

We further note that the limitation of a linking value that links identifying data in the first receipt with the time indication in the second receipt is similarly recited in independent claim 9. Therefore, we also reverse the Examiner's rejection of claim 9 as being anticipated by Haber for the same reasons discussed *supra*.

If an independent claim is allowable under 35 U.S.C. § 102, then any claim depending therefrom is also allowable. See *In re Fine*, 837 F.2d 1071,

1076 (Fed. Cir. 1988). Therefore, we reverse the Examiner's rejections of dependent claims 2-8 which depend from independent claim 1, and claims 10-19 which depend from independent claim 9.

CONCLUSIONS OF LAW

Based on the findings of facts and analysis above, we conclude that Appellants have shown the Examiner erred in rejecting claims 1-19 under 35 U.S.C. § 102(b) for anticipation.

DECISION

The decision of the Examiner rejecting claims 1-19 is reversed.

REVERSED

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